S.B. CIVIL WRIT PETITION NO.3076/2003
Smt. Sohani Devi
vs
The State of Rajasthan & Anr.

DATE OF ORDER:19.5.2006.

HON'BLE MR.R.C. GANDHI, J.

Mr.PS Bhati, for the petitioner.
Mrs. RR Kanwar, Dy. GA, for the respondents.

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(ORAL)

The petitioner has averred in the petition that she was appointed as Safai-Karmchari on daily wage basis in the department of the respondents in the year 1973 and since then she is discharging her duties. The petitioner is getting Rs.240/- per month as remuneration, which is below the minimum wage rate fixed by the respondents to be paid to a labour, who works for 8 hours in a day. The petitioner has also averred in the petition that she has no other source of income to lookafter her poor family consisting of her sons and daughters. The petitioner made a representation to the respondents for regularization of her services but the respondents have not attended the representation of the petitioner.

The respondents have filed reply stating therein that the petitioner's services cannot be regularized as the petitioner has been engaged for a part time worker for cleaning the office and there is no

post of Safai Karmchari in the department. It is also stated in the reply that the petitioner is working as part time worker and initially she was engaged on the minimum payment of Rs.30/- per month, which was enhanced subsequently to Rs.240/- per month. The petitioner is working for fixed period and not for whole of the day, thus, she is not entitled to the payment of minimum wages.

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has submitted that the stand taken by the respondents in their reply that the petitioner is a part time worker is contrary to the facts. His submission is that the petitioner is working for 8 hours in a day. To the reply of the respondents, the rejoinder has not been filed by the petitioner to clarify it. Therefore, it is a disputed question of fact as to whether the petitioner is working as part time worker or for 8 hours in a day. The respondents if getting the work from the petitioner for 8 hours in a day, in that event, the petitioner is entitled to minimum wages.

So far as prayer of the petitioner for regularization of services is concerned, it is condition precedent that the petitioner should have been appointed against the post and his appointment should be according to the manner and method suggested by the rules governing by service. The respondents have stated that there is no post, therefore, such a direction cannot be issued as mandated by the Supreme Court in the case title Himachal Road Transport Corporation Vs. Dinesh Kumar reported in 1996 SC 2226 holding as under: -

> "8. We are of the view that the Himachal Pradesh Administrative Tribunal acted illegally and without jurisdiction in passing the orders dated 27.3.1995 and 6.3.1995 and in directing that the respondents be appointed in the regular clerical posts forthwith. In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorized. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such post. We are of the view that directions given by the Administrative Tribunal, in these two appeals, are totally unauthorized and illegal. We are, therefore, constrained to set aside the orders appealed against. We hereby do so and allow the appeals. There shall be no order as to costs."

It is also submitted at the bar that observation be made that in case the respondents have framed any scheme for absorption of part time workers as has been framed by the other departments of the State, in that event, the petitioner may also be considered. It is quite innocuous prayer and if any scheme has been prepared for such purpose, the respondents may consider the petitioner also at her turn.

Now there remains the question as to whether a direction can be issued to the respondents to pay minimum wages to the petitioner. It is not made out by the petitioner by filing rejoinder or any other evidence that the petitioner is working for 8 hours in a day and is entitled to claim the minimum wages. However, direction is issued to the

respondents to examine from their record as to whether the petitioner is working as part time for few hours in a day or her services are being utilized by the respondents as Safai Karmchari for 8 hours in a day. If the services of the petitioner are being utilized for full day,i.e., 8 hours, in that event, the respondents shall pay the petitioner the minimum wages as sanctioned by the State.

The petition is, accordingly, disposed of.

(R.C. Gandhi), J.

c.p.goyal/-